



Appeal Decision

Site visit made on 3 June 2025

by **N Bowden BA(Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 JUNE 2025

Appeal Ref: APP/B1930/W/24/3357869

32 Breakspear Avenue, St Albans, Hertfordshire AL1 5EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Luke Scullion (McPartland Planning Ltd) against the decision of St Albans City Council.
 - The application Ref is 5/24/1381.
 - The application sought planning permission for demolition of existing bungalow and construction of detached dwelling with new vehicle crossover and associated landscaping works without complying with a condition attached to planning permission Ref 5/24/0118, dated 1 August 2024.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of Classes A, AA, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement, alteration or extension of the dwelling hereby permitted, including any additions or alterations to the roof, and no building or enclosure shall be constructed within the curtilage of the new dwelling, without the prior written permission of the Local Planning Authority.
 - The reason given for the condition is: To allow the Local Planning Authority to retain control of the development in the interests of residential and visual amenity and to comply with Policies 69 and 70 of the St. Albans District Local Plan Review 1994 and the National Planning Policy Framework 2023.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing bungalow and construction of detached dwelling with new vehicle crossover and associated landscaping works at 32 Breakspear Avenue, St Albans, Hertfordshire AL1 5EL in accordance with the application Ref 5/24/1381, without compliance with condition number 6 previously imposed on planning permission Ref 5/24/0118 dated 1 August 2024 and subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission was recently granted for the construction of a detached house. The development was subject to conditions, of which condition 6 removed rights to undertake further works to the property with deemed planning permission, commonly known as permitted development. This restriction related to Classes A, AA, B, C, D and E or, in summary, extensions including roof extensions, porches and outbuildings.
3. The main issue is therefore whether condition 6 meets the tests set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). Specifically, this is whether it meets the tests of being necessary,

relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects, and, having particular regard to the effect that its removal would have on the living conditions of neighbours and upon the character and appearance of the area.

Reasons

4. The PPG notes that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity¹. Permitted development rights are granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). The forms of development it allows for have therefore already been judged as being acceptable and such rights should not be taken away unless there are particularly pertinent reasons for doing so.
5. In this instance, the site is within an established, built-up residential area. It is not washed over by the Green Belt nor features, or is in proximity to, any heritage assets. I do recognise that whilst this is a suburban area, the grain of surrounding development is relatively tightly knit. This leads to occasions where extensions, including roof extensions, outbuildings and the like that are afforded permitted development could have an effect on the living conditions of neighbours or the areas character.
6. However, the Order has already determined that such effects are satisfactory subject to the conditions and limitations set out within the Order. The nature of the surrounding area is one where the presence of overlooking windows, relatively short gardens and proximity to other homes is an established situation. Being mindful of the limits imposed by the Order, I do not find that any such alterations to number 32 would have a significant deleterious effect on the living conditions of neighbours compared to this existing situation.
7. Moreover, whilst the general area shows distinct elements of Arts and Crafts style design, there is ample evidence of domestic extensions and alterations. Not all of these can be said to enhance the appearance of the area but nevertheless form part of its character. As such, permitted development alterations to number 32 are unlikely to significantly impact on this overall character and appearance of the area. I therefore conclude that the removal of conditions would comply with policies 69 and 70 of the St. Albans District Local Plan Review 1994 and the provisions of the Framework.
8. I have noted the findings of previous Inspectors in relation to recent decisions on the site where issues of character and appearance and living conditions were explored. However, these decisions both related to the construction of two new dwellings, and this is a different proposition to the potential alterations that could be undertaken with deemed permission.

Other Matters

9. In reaching my conclusions here I have been mindful of the comments of neighbours. However, my consideration of this proposal is confined to the effect of the removal of condition 6 of the planning permission only and it is not within my remit to consider the merits of the original decision. I have already concluded that

¹ Paragraph: 017 Reference ID: 21a-017-20190723

the effects of further development utilising permitted development rights would be acceptable, and this includes the effects of overlooking and loss of light.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

Conditions

11. The Council has provided a schedule of conditions in the event that the appeal is allowed. These are a repetition of those imposed on planning permission Ref 5/24/0118 albeit with the absence of the original condition 6.
12. I have not imposed a time limit condition for the commencement of the development as work on implementing the original planning permission has already taken place.
13. Conditions 5 and 11, as proposed by the Council (my amended conditions 4 and 10), are pre-commencement conditions. As the development has already commenced, I cannot impose these as it would be impossible for the appellant to comply with them. I have therefore rephrased these conditions to refer to “prior to occupation” given that the development has commenced but is not complete.
14. This is because I am mindful that the advice in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I have imposed all those that may remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. Excepting for the above, I have re-imposed all the relevant conditions for the same reasons as specified in the Council’s original decision.
16. Finally, I have corrected a typographical error in condition 11 f) which contained a repetition of the words “and construction”.

N Bowden

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 261.6-PLK-06 A, 261.6-PLK-02 C, 261.6-PLK-03 C, 261.6-PLK-04 C and 261.6-PLK-05 C.
- 2) The materials to be used in the construction of the external surfaces of the development, hereby permitted shall be as stated on the approved plans. Development shall only be carried out in accordance with the approved details.
- 3) The windows in the first floor rear elevation which serve the bathroom and the en-suite (as depicted on submitted plan 261.6-plk-02 rev c) shall be glazed in obscure glass and shall be non-opening below a height of 1.7m taken from internal finished floor level. The windows shall not thereafter be altered in any way and no new windows other than those shown on the hereby approved plans shall be created at first floor without the prior written approval of the local planning authority.

The window serving the en-suite (as depicted on submitted plan 261.6-plk-02 rev c) in the side elevation facing towards Nos. 3 and 5 Edward close shall be glazed in obscure glass and shall be non-opening below a height of 1.7m taken from internal finished floor level. The window shall not thereafter be altered in any way without the prior written approval of the local planning authority.

The window serving bedroom 4 (as depicted on submitted plan 261.6-plk-02 rev c) in the side elevation facing towards No. 30 Breakspear Avenue shall be obscure glazed up to a height of 1.7m taken from internal floor level and shall not be openable below a height of 1.7m taken from internal floor level except in the event of an emergency. The window shall not thereafter be altered in any way without the prior written approval of the local planning authority.

- 4) Prior to the first occupation of the development hereby permitted details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
 - a) proposed finished levels and contours;
 - b) planting plans and specifications;
 - c) means of enclosure;
 - d) pedestrian access and circulation areas;
 - e) minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, lighting etc).
- 5) Unless the development has been completed, a development progress report must be provided to the local planning authority 12 months from the date of planning permission being granted. Such a report shall be provided annually thereafter from the date of approval, until the development is completed.
- 6) Prior to the first occupation of the development hereby permitted the vehicular access, car parking and turning areas shall be completed and thereafter retained as shown on Block Plan drawing number 261.6-PLK-03 C to the Local Planning Authority satisfaction in consultation with the highway authority and used for no other purpose at any time. Prior to use appropriate arrangements shall be made

for surface water to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

- 7) Prior to the first use of the development hereby permitted the vehicular and pedestrian (and cyclist) access to, and egress from, the adjoining public highway shall be limited to the access shown on drawing number 261.6-PLK-03 C only. Any other access or egresses shall be permanently closed, and the footway / kerb / shall be reinstated in accordance with the Local Planning Authority in consultation with the highway authority.
- 8) Prior to the first use of the development hereby permitted 0.65 x 0.65 metre pedestrian visibility splays shall thereafter be retained at all times to each side of the access. They shall be measured from the point where the edges of the access way cross the highway boundary, 0.65 metres into the site and 0.65 metres along the highway boundary therefore forming a triangular visibility splay. Within which, there shall be no obstruction to visibility between 0.6 metres and 2.0 metres above the carriageway.
- 9) The roof area of the rear single storey projection below Bedroom 2 shall not be used as a balcony or outdoor amenity area without the grant of further specific permission from the Local Planning Authority. No railings, fence, walls or other means of enclosure shall be constructed on the roof of the rear projection without the prior written consent of the Local Planning Authority.
- 10) Prior to the first occupation of the development hereby permitted, a scheme for the protection of retained trees on and off-site, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:
 - a) Location and installation of services/ utilities/ drainage.
 - b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
 - c) Details of construction within the RPA or that may impact on the retained trees.
 - d) A full specification for the installation of boundary treatment works.
 - e) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
 - f) Tree protection during construction indicated on a TPP and construction activities clearly identified as prohibited in this area.

The development thereafter shall be implemented in strict accordance with the approved details.

End of Schedule